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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2577/2015*, **

Communication submitted by:	Ozoda Yakubova (represented by counsel, Patrick Griffith, Freedom Now)
Alleged victim:	Azamjon Formonov
State party:	Uzbekistan
Date of communication:	3 September 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 2 March 2015 (not issued in document form)
Date of adoption of Views:	6 April 2018
Subject matter:	Arbitrary detention; torture; unfair trial of a human rights activist
Procedural issues:	Non-exhaustion of domestic remedies
Substantive issues:	Arbitrary detention, torture, fair trial, right to counsel of his own choosing, right to have adequate time and facilities for the preparation of a criminal defence, right not to confess guilt, unlawful interference with privacy, family and home, freedom of expression
Articles of the Covenant:	2 (2); 7; 9 (1); 14 (1), (2) and (3) (b), (e) and (g); 17; and 19 (2)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Ozoda Yakubova, an Uzbek national born in 1979, who files the complaint on behalf of her husband, Azamjon Formonov, an Uzbek national born in 1978. The author is represented by counsel, Patrick Griffith of Freedom

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed A. ·in Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

Now.[1] At the time of the submission, Mr. Formonov was being detained in Jaslyk Prison.[2] The author asserts that Mr. Formonov is a victim of violations of articles 7 read alone and in conjunction with article 2 (2); 9 (1); 14 (1) (2) and (3) (b), (e) and (g); 17; and 19 (2) of the Covenant. The Optional Protocol entered into force for the State party on 28 September 1995.

The facts as submitted by the author

2.1 The author's husband is a well-known human rights activist, the chair of the Syrdarya regional branch of the organization Human Rights Society of Uzbekistan, for which he monitored trials and produced pamphlets on human rights. On 29 April 2006, police officers arrested him arbitrarily on charges of extortion then searched his home without a warrant at 10 a.m. and 2.30 p.m. When they returned a third time, at 4 p.m., the police knocked unconscious Mr. Formonov's pregnant wife, who required overnight hospital treatment. The police seized all human rights material found at the apartment, as well as Mr. Formonov's computer and printer. Mr. Formonov was held incommunicado for one week after his arrest and tortured, including by suffocation and beatings, in order to elicit a false confession. He was later permitted access to a lawyer, but the latter failed to act independently and effectively to defend his client's interests.

2.2 On 15 June 2006, without presenting any evidence at trial or giving Mr. Formonov the opportunity to be represented by a counsel of his choice, a judge found Mr. Formonov guilty and sentenced him to nine years in a general prison. Contrary to that sentence, the State party has held Mr. Formonov in Jaslyk Prison, a strict-regime prison that is recognized as the harshest in the country. Many international human rights monitoring bodies and organizations, including the Committee against Torture, the Working Group on Arbitrary Detention, Human Rights Watch and Amnesty International, have expressed their concern over his treatment as Mr. Formonov has been repeatedly tortured in Jaslyk Prison. From 23 May to 19 June 2007, he was held in an isolation cell and his legs and feet were beaten so severely that he was unable to walk for 10 days. From 10 to 20 October 2007, he was accused of "failing to walk straight in line" and placed in an unheated isolation cell for 10 days, where he was handcuffed and beaten by prison officials. Because the temperature was below freezing, he fell ill with symptoms that lasted for months. The authorities repeatedly beat him to coerce him into signing various statements. In 2008, he was beaten until he signed a statement admitting to breaking prison rules. In 2011, to force Mr. Formonov to sign a document stating that he was not being tortured but was in perfect health, detained under good conditions and had access to medical care, prison authorities beat Mr. Formonov severely on his head, back and stomach for an hour. Mr. Formonov claims that, while he was being strangled, officer S.V. threatened to kill him, as well as whoever visited him, including his wife, and to imprison his children.

2.3 Representatives of the Red Cross could not meet with Mr. Formonov in Jaslyk Prison because, during their visits there, they were told he had been transferred to another prison, in Nukus. The Committee against Torture has expressed particular concern that Mr. Formonov has allegedly been subjected to torture while being arbitrarily detained and imprisoned (see CAT/C/UZB/CO/4, para. 8).

2.4 Mr. Formonov filed several appellate complaints over the judgment of 15 June 2006 of the court of first instance. According to the Syrdarya Prosecutor's Office, the Syrdarya Regional Court considered the appeal, but left the decision unchanged. The document issued by the Office acknowledged the appellate decision but did not give an exact date of the decision. Despite numerous attempts to obtain a copy, the Court has not issued the author with a copy of the appellate court's decision. According to the author, Mr. Formonov's father-in-law "sent complaints" to the Syrdarya Regional Court, the Syrdarya State Prosecutor's Office and the Supreme Court, concerning the violations of Mr. Formonov's rights to a fair trial and accusations of torture, but received no response. The author submitted a complaint to the Ombudsman and received a one-page response that summarily concluded that there were no legal grounds to bring an appeal under the

[1] Power of Attorney signed by the author provided.

[2] He was released on 3 October 2017.

supervisory procedure. The author sent a complaint to the Prosecutor General's Office, which merely forwarded the complaint to the Syrdarya Prosecutor's Office, which was itself responsible for the criminal prosecution that had violated Mr. Formonov's right to a fair trial. On 4 September 2009, that Prosecutor's Office dismissed the complaint without providing any reasoning, and stated that any additional applications on the same subject matter would be "left without consideration". The author also submitted a complaint to the Deputy Minister for Internal Affairs and a letter to President Karimov. On 26 April 2014, Mr. Formonov's family filed a complaint under the supervisory procedure to the Supreme Court, which remained without response.

2.5 Two cases were brought by or on behalf of Mr. Formonov before the Working Group on Arbitrary Detention, which in an opinion dated November 2012 found that his prosecution and imprisonment had been arbitrary and had amounted to a violation of his right to freedom of expression under article 19 of the Covenant, and directed the State party to provide Mr. Formonov with a new trial.

The complaint

3.1 The author claims that her husband is a victim of violations by Uzbekistan of articles 7, read alone and in conjunction with article 2 (2), and 9 (1), 14 (1), (2) and (3) (b), (e) and (g), 17 and 19 (2) of the Covenant.

3.2 The author claims that, in violation of article 7 of the Covenant, Mr. Formonov was subjected to incommunicado detention for one week after his arrest, was suffocated by being forced to wear a gas-mask with closed air-vents, was repeatedly and severely beaten, was held in isolation, stripped of his clothing and handcuffed, and was held in an unheated prison cell for 23 days in temperatures below freezing. The author also claims a violation of article 7 read in conjunction with article 2 (2) because the State party failed to establish safeguards against torture to prevent Mr. Formonov from being held incommunicado, failed to provide him and his family with access to an independent lawyer, failed to ensure that places of detention were free from any equipment that could be used to inflict torture, failed to allow independent monitoring of detention facilities, and failed to properly investigate instances of torture and provide an effective remedy.

3.3 Concerning article 9 (1) of the Covenant, the author asserts that the true motive of the Government in arresting, detaining and incarcerating Mr. Formonov was to persecute him for his human rights work and to silence him. The author maintains that Mr. Formonov's arrest and detention is therefore arbitrary.

3.4 The author maintains that the pretrial investigation and trial included the following egregious violations of article 14 of the Covenant:

(a) Mr. Formonov's confession was extracted by torture;

(b) Mr. Formonov was held incommunicado and denied the right to communicate with any counsel. Eventually, he was allowed to communicate with a lawyer appointed by, and acting under the influence of the Government, who was present when the authorities interrogated and tortured Mr. Formonov in order to force him to sign a false confession. Mr. Formonov declined the lawyer's services and was forced to rely on his father-in-law, Mr. Yakubov, who had no legal training, to handle his legal defence. However, the court first impeded Mr. Yakubov's from preparing a defence, then removed him as counsel without notice moments before the trial began. Judge K. attempted several times to limit Mr. Yakubov's access to prosecutorial documents. Mr. Yakubov and Mr. Formonov were never granted access to certain court documents, including the decision of the appellate court;

(c) Mr. Formonov was held in an iron cage during his trial, which violates article 14 (2) of the Covenant;[3]

(d) No witnesses were questioned in the presence of Mr. Formonov or his representative during the only hearing, which lasted less than 30 minutes and was, according to the author, composed solely of Judge K., who read the judgment and sentence;

[3] See Amnesty International, *Fair Trial Manual* (second ed.), (London, 2014).

(e) Mr. Formonov's trial was not impartial because the presiding judge was the same judge that Mr. Formonov had criticized in his pamphlets.

3.5 Regarding article 17 of the Covenant, the author maintains that Mr. Formonov's right against unlawful interferences with his privacy, family and home was breached when the authorities carried out searches of his apartment without a proper warrant and seized his property.[4]

3.6 Regarding article 19 (2) of the Covenant, the author maintains that the true motive of the Government in arresting, detaining and incarcerating Mr. Formonov was to persecute him for his human rights work and to silence him. Mr. Formonov had monitored and documented human rights violations perpetrated by the authorities in pamphlets that were distributed to human rights organizations and foreign embassies. The pamphlets had no probative value to the unrelated and unfounded charge of extortion, which amounts to a breach of freedom of expression.

State party's observations on admissibility and the merits

4.1 On 25 October 2016, the State party submitted its observations, in which it affirmed that the arguments set forth in the communication had been thoroughly examined and had not been confirmed, owing to the absence of facts confirming that the law enforcement agencies had committed acts breaching articles 7, 9 (1), 14, 17 and 19 (2) of the Covenant. It stated that Mr. Formonov had been convicted on 15 June 2006 by the Yangiyer Criminal Court under article 165 of the Criminal Procedure Code to nine years' imprisonment in a general-regime prison. On 18 June 2006, the Syrdarya Regional Court had examined the case and had upheld that verdict.

4.2 The Court had found him guilty on several grounds. On 12 April 2006, Mr. Formonov, calling himself a representative of the Human Rights Society of Syrdarya region, together with two farming leaders, had sent a report to the head of the Unitary Oil Enterprise with the intention of seizing the property of another citizen through extortion. In that report, he had stated that the distribution agent of the Dashtabad branch of the enterprise, U.M., had not delivered petroleum products in a timely manner to farmers and on occasion had not supplied a full measure of fuel. They had requested that measures be taken against the responsible parties.

4.3 A commission had investigated the matter but had found no confirmation of the allegations. Mr. Formonov had entered into a criminal association with his acquaintance, A.K., and on 28 April 2006 had met with U.M. in Yangiyer. He had threatened to make public on the Internet the report describing the irregularities in the delivery of petroleum products, which would result in the agent's dismissal. He had demanded that U.M. give him 600,000 Sum[5] not to take that action.

4.4 On 29 April 2006, at approximately 7.30 a.m., Mr. Formonov and A.K. had been arrested at the bus stop on Tashkent Street in Gulistan while receiving from U.M. $250 and 200,000 Sum[6] through extortion. Later that day, due to urgent matters arising in the course of the investigation, Mr. Formonov's home was searched. The supervising prosecutor was informed of this subsequently, in accordance with article 161 of the Criminal Procedure Code. During the search, items connected with the crime were discovered. Due to the serious nature of the charges, on 1 May 2006, the authorities decided to place Mr. Formonov in pretrial detention. His guilt had been proven by the evidence of the victim, witnesses, reports on searches of the scenes of the incident, charts and photographs, forensic-chemical examination and other evidence gathered during the investigation and examined in court.

4.5 Mr. Formonov's accusations about his supposed torture, the examination of his case in closed-court session and the violation of his right to defence in his appeal complaint were examined during the appeal hearing, and were not confirmed.

[4] See José Antonio *Coronel et al. v. Colombia* (CCPR/C/76/D/778/1997), para. 9.7.

[5] Equivalent to $491 at that time.

[6] Equivalent to $163 at that time.

4.6 During the preliminary investigation, Mr. Formonov was defended by lawyers — Mr. Kholikberdiyev and Mr. Nomozov. In a statement in the case, Mr. Formonov declared himself guilty under article 168 of the Criminal Procedure Code. During the preliminary investigation, Mr. Formonov did not make any statement about torture being used against him. During the court hearing, while questioned about the conditions of his pretrial detention and whether any unlawful measures had been being taken against him, Mr. Formonov did not state that such measures had been taken. The case was heard in open-court session with the participation of the lawyer Mamadaliyev. Because Mr. Formonov had breached the court order, and in accordance with article 272 (2) of the Criminal Procedure Code, he was removed from the court room. At the end of the proceedings, the court granted Mr. Formonov the opportunity to participate in the arguments and make a closing statement, which he refused.

4.7 The preliminary investigation and court examination were conducted in accordance with the norms of criminal procedural law. The court's classification of Mr. Formonov's actions is correct and his punishment proportionate to the crime committed. His sentence is well founded and legal.

4.8 While serving his sentence, Mr. Formonov has systematically broken the penitentiary rules, refused to abide by lawful demands made by the prison administration, and been a malicious rule-breaker, for which he has received 20 disciplinary punishments. On 3 April 2015, the prosecutor of Kungrad District of the autonomous republic of Karakalpakstan opened a criminal case against Mr. Formonov under article 221 (2) (b) of the Criminal Procedure Code for "disobeying legal demands of the administration of a correctional facility". On 1 May 2015, Mr. Formonov was sentenced by the Kungrad District Court to 5 years and 26 days of imprisonment, under articles 60 and 221 of the Code. When deciding on the nature and length of the sentence, the Court took into account all mitigating and aggravating factors. The measures taken did not breach the norms and regulations of national legislation or international standards. While serving his sentence, Mr. Formonov did not improve his behaviour but continued to break the prison rules and internal order. On 2 May and on 5 June 2016, he was subject to disciplinary reprimands, yet he was not held in isolation as a disciplinary measure.

4.9 Mr. Formonov has been generally cared for by the prison medical staff and is healthy and fit to work. The medical staff have assessed his state of health as satisfactory, with no need for medical treatment. The prison administration has not permitted the conduct of any acts contravening his rights. He has not been subjected to physical or psychological pressure and has not submitted any complaint to the prison administration.

4.10 In the period 2015–2016, Mr. Formonov was granted six meetings with relatives.[7] During those meetings, lawyers did not request meetings with him, and Mr. Formonov did not make any request to the prison administration to meet with his counsels.

4.11 The accusation of torture by police officers during his arrest and trial are unsubstantiated, presented without any concrete details and not confirmed by any arguments or facts. It aims to denigrate the actions and present a negative image of the State party's law enforcement officers.

4.12 The alleged human rights violations in the penitentiary system described in the communication did not take place and could not take place. In the correctional system, particular attention is paid to human rights, to observance of legality and prevention of human rights violations in penitentiary institutions.

Author's comments on the State party's observations

5.1 In his comments of 17 January 2017, the author challenges the State party's narrative of Mr. Formonov's arrest, trial and detention as inadequately addressing the allegations submitted to the Committee. The State party's response reiterates the false position that Mr. Formonov was arrested in accordance with due process, detained and convicted of extortion. The author argues that the allegation that Mr. Formonov's violated

[7] On 18 January 2015, 1 July 2015, 8 November 2015, 11 March 2016, 11 July 2016 and 18 August 2016.

the terms of his detention and the resulting conviction and additional sentence was merely a pretext to extend his original sentence, being both wildly disproportionate to his alleged infractions and the result of a hearing which violated his rights to a fair trial. The State party inaccurately claims that there have been no continuing violations of Mr. Formonov's rights as a detainee to have access to his attorney or to be free from torture or abusive treatment.

5.2 The State party fails to address the allegations that Mr. Formonov was targeted in order to prevent him from carrying out his human rights activism and to restrict his freedom of expression, and that his detention was arbitrary as it was a response to his exercise of a fundamental right. The State party also fails to confront, or even deny, its documented practice of persecuting human rights defenders by imprisoning them on fabricated extortion charges, and does not acknowledge that the police seized human rights materials from Mr. Formonov's home.

5.3 The author maintains that the evidence used was fabricated and that Mr. Formonov's confession was obtained under torture. The chemical powder used to mark money for extortion was applied to Mr. Formonov by the police after he was in custody.

5.4 The fact that Mr. Formonov was, as the Government stated, arrested at the bus stop on Tashkent Street in Gulistan, having received from U.M. $250 and 200 thousand Sum through extortion is incorrect. This statement fails to explain the conflicting narrative set forth in the court's decision, which variously describes Mr. Formonov having been caught "in flagrante delicto" as he received the money and as having been caught when the bribe money was recovered from inside his computer during a subsequent search of his apartment.

5.5 The search was performed without a valid warrant and with extraordinary brutality. Police attempted to search Mr. Formonov's house twice without a warrant, then on their third attempt the officers presented an incomplete warrant, lacking the signature of an authorizing official or the seal of the Prosecutor's Office. The officers beat the author, who was pregnant, so badly that she was knocked unconscious and required overnight hospitalization.

5.6 Although the State party states that police discovered unspecified "items connected with the conduct of the crime", in fact the officers seized items connected with Mr. Formonov's human rights work, namely, a computer and a photocopier used to produce human right pamphlets, and human rights literature, including pamphlets documenting torture and other human rights abuses of the authorities. Such documentation would have been irrelevant to a legitimate extortion charge.

5.7 The author challenges the State party's assertion that Mr. Formonov was not placed in pretrial detention until 1 May 2006, and claims that Mr. Formonov was held incommunicado in pretrial detention for over a week, starting from his arrest on 29 April 2006.

5.8 Although the judgment references the testimony of seven witnesses, no witnesses were questioned in the presence of Mr. Formonov or his representative and there was no opportunity to examine any testimony. Mr. Formonov was represented by State-appointed counsels instead of his chosen representative, and it is unlikely that any evidence presented at trial would have been subjected to a rigorous cross-examination. The trial, during which all of the evidence was allegedly presented, lasted less than half an hour and comprised solely Judge K. reading the judgment and the sentence. Given the fabricated nature of evidence, the lack of cross-examination by him or his chosen representative and the briefness of the trial in which such evidence was to have been heard, the State party's contention that Mr. Formonov's guilt was proved by evidence is false.

5.9 The author notes that the appeals trial was not open to the public or to Mr. Formonov's family, so it is not clear what occurred behind closed doors. Mr. Formonov's family has been unable to obtain a copy of the appeals decision, despite a request to the regional court. Thus the State party cannot rely on an assertion that the appeals court appropriately examined and dismissed Mr. Formonov's complaints if it keeps the records of such proceeding secret.

5.10 Messrs. Kholikberdiyev and Mamadaliev were not attorneys of Mr. Formonov's choosing. Mr. Kholikberdiyev was a court-appointed attorney whose services had been terminated by Mr. Formonov's family because Mr. Kholikberdiyev had been present during the torture and had refused to submit any complaints regarding such torture. In contravention of Mr. Formonov's express wishes, the court reappointed Mr. Kholikberdiyev to represent him during the trial. Mr. Mamadaliev was also a court-appointed attorney known to be under the influence of the Government. Mr. Formonov's chosen representative was removed from the case by the court on the day that the trial took place, allegedly so that he could be called as a witness. However, during the trial that took place moments after his removal, Mr. Yakubov was not called to testify, thus illustrating that the court had replaced him without legitimate reason.

5.11 Mr. Formonov's confession, obtained through torture, does not demonstrate the guilt of the accused but the violation of international law by the authorities who conducted the interrogation. Mr. Formonov had no opportunity to complain about the torture at any time prior to his conviction, but Mr. Yakubov and the author submitted complaints. Mr. Formonov was initially held incommunicado before he had access to a court-appointed attorney, who sanctioned the use of torture to obtain a confession by being present during such torture and refusing to file a complaint regarding this abuse. Mr. Formonov told Mr. Yakubov about the torture he had suffered. However, Mr. Yakubov was removed as representative prior to the trial and so was not given an opportunity to raise this issue before the court. Mr. Formonov himself was removed from the courtroom for at least part of the proceedings and was not permitted to cross-examine any witness, again denying him the ability to complain as to how the evidence had been collected.

5.12 The court hearing was closed to the public, as well as Mr. Formonov's family, supporters and chosen representative. As the State party has admitted, even Mr. Formonov was not permitted to attend parts of his own trial, because he was removed after allegedly breaching the court's order. His court-appointed attorneys, known to be under Government influence, were present.

5.13 In its reply, the State party fails to respond to the specific allegations regarding the violations of Mr. Formonov's rights under article 14 of the Covenant, namely: (a) the right not to be compelled to confess guilt, by obtaining a confession through torture; (b) the right to have adequate time and facilities to prepare a defence and to communicate with counsel of one's own choosing, by holding Mr. Formonov incommunicado for one week following his arrest, by impeding access by Mr. Formonov's chosen representative to prosecutorial documents and by removing the chosen representative in favour of court-appointed lawyers, who provided unprofessional and unethical legal advice; (c) the right to cross-examine witnesses, by holding an abridged trial of less than 30 minutes without any evidence or witnesses presented; (d) the right to a fair and public hearing by an impartial tribunal, by holding a closed trial wherein the presiding judge had been previously criticized by Mr. Formonov in his human rights pamphlets; and (e) the right to a presumption of innocence, by presenting him to the court in a cage.

5.14 Mr. Formonov's torture was described in detail, including information on how he was tortured, who was present and the statements made during the torture. Post-conviction torture was also well detailed, including his placement in isolation cells, continual beatings that left him unable to walk for over a week, his placement in unheated cells in freezing temperatures that made him ill, his being strangled by prison authorities and threats of imprisonment of his children. In suggesting that torture allegations were made in order to denigrate the image of internal affairs agencies and their actions and to paint a negative image of the officers, without investigating such allegations, the State party ignores not only the specific and detailed accusations, but also the pattern of widespread and ungrounded torture in its criminal justice system, particularly against human rights defenders, as has been confirmed by, inter alia, the Committee against Torture (see CAT/C/UZB/CO/4, para. 8). Such accusations of bad faith also attempt to divert attention from the State party's actions to actively conceal such torture by denying prison visits to Mr. Formonov in order to conceal his torture marks or by removing him from prison during visits by the Red Cross.

5.15 Mr. Formonov was beaten to force him to sign a statement admitting that he had broken prison regulations. The State party's account of his alleged violation of the prison regulations indicates that his additional conviction was "in connection" with the 20 disciplinary punishments. However, the judgment of 1 May 2015 handed down by the Kungrad District Court shows that he was only tried for four infractions, which had allegedly occurred a few months prior to his release date. Mr. Formonov denied committing these infractions but confirmed that he had been placed in punishment cells for the commission of such infractions. The additional five years' imprisonment is a further violation of Mr. Formonov's rights to a fair trial, free expression and to be free from arbitrary detention. The court did not allow Mr. Formonov to communicate with a counsel of his own choosing, and he was not permitted the assistance of counsel during the hearing. The court solely relied on witness statements by prison guards and did not permit Mr. Formonov to cross-examine such witnesses. Although the sentencing judgment states that the hearing was "open", neither Mr. Formonov's counsel nor his family members were informed of the hearing and were therefore prevented from attending.

5.16 Despite serious violations of Criminal Procedure Code and international standards of due process, the Kungrad District Court concluded that the witness statements had been reliable and admissible and that Mr. Formonov's guilt had been fully proven. However, even if Mr. Formonov had been afforded due process and were still found to have made offensive statements, the five-year sentence was wildly disproportionate to the severity of his "crimes", as was his placement in an isolation cell for extended periods of time for such offences. Taken at their worst, Mr. Formonov's alleged crimes amount to merely an administrative infraction of failing to wear proper identification and insults which do not incite violence. Once again, Mr. Formonov has been sentenced to extended imprisonment on the basis of his exercise of a fundamental right which, coupled with the due process violations, has ensured that he will continue to be a victim of arbitrary detention for an additional five years.[8]

5.17 Mr. Formonov has suffered numerous post-conviction violations of his rights related to the denial of visitation from his attorneys, being held in solitary confinement and torture. His attorneys have twice been prevented from visiting their client. On 1 March 2016, one attorney, Mr. Parpieva, went to the prison to visit him, but was denied entry. On 1 May 2016, another attorney, Mr. Mardiev, was also denied access.

5.18 From 23 May to 19 June and from 10 to 20 October 2007, Mr. Formonov was incarcerated in an unheated isolation cell. He has since been held in an isolation cell on various occasions: on 24 January, 17 February and 9 March 2015, he was placed in an isolation cell respectively for 5, 10 and 20 days, allegedly for insulting inmates. In 2007, his legs and feet were beaten so severely that he was unable to walk for 10 days. In 2008, he was beaten until he agreed to sign a statement that he had violated prison regulations. In 2011, he was strangled and beaten until he agreed to sign a statement that he was being held in good conditions and with access to medical treatment. Such beatings were also accompanied by verbal threats against his family. The State party has also attempted to hide its treatment of Mr. Formonov by preventing family visitation while he bore marks of torture or by removing him from the prison during visits by the Red Cross. In February 2012, he conducted a hunger strike to protest his torture and the denial of family visits.

State party's additional observations

6.1 On 13 April 2017, the State party reiterated its previous observations. It challenged the author's assertion that evidence used to convict Mr. Formonov had been fabricated and his confession had been obtained under physical duress, by reiterating a detailed narrative of the crime and arrest. It explained that Mr. Formonov had received money from U.M. at a bus stop at around 7 a.m., before fleeing the scene upon the arrival of the police. After fleeing by walking through a provincial hospital and then taking a public minibus home, Mr. Formonov then drove back to the crime scene, where he was apprehended as a suspect. The conversation of 28 April 2006 between Mr. Formonov and U.M. was recorded and the

[8] At the time of the submission, Mr. Formonov was appealing this additional conviction through the domestic courts. No further information is on file.

transcript showed that Mr. Formonov had requested 600,000 Sum, including 500,000 in order for Mr. Formonov to convince his organization's leadership not to publish compromising facts against U.M. and 100,000 for Mr. Formonov himself. Chemical powder used to mark the extorted money was found on Mr. Formonov's hands, face and hair. His co-accused, A.K., confessed his guilt admitting that they had received money from U.M.

6.2 The State party submits that no search warrant was needed under article 161 of the Criminal Procedure Code because the search had been ordered by the investigator and conducted under exigent circumstances. Furthermore, the State party states that there was no recorded evidence in the criminal case file and no corroborating materials that the author had been struck and hospitalized. In response to the allegation that the materials seized had been irrelevant to Mr. Formonov's crime of extortion, the State party argues that no human rights literature was seized and, because he used his office equipment to commit the crime, the confiscation of such equipment was relevant to the investigation. On 1 May 2006, Mr. Formonov was detained as accused. On 18 May, the pretrial investigation was completed and the case sent to the Yangier District Court.

6.3 The State party gives a narrative of the trial and contends that Mr. Formonov's guilt was evidenced by a confession given freely in the presence of his attorney, Mr. Kholikberdiev, at the pretrial phase. His other attorney, Mr. Nomozov, explored changing the legal basis of Mr. Formonov's crime. Mr. Yakubov, Mr. Formonov's chosen representative, had ample time to prepare for the criminal case. He was allowed to study the case file for three hours on 8 June and for eight and a half hours on 9 June 2006. On 12 June 2006, he requested additional time to study the case. The hearing was adjourned to the next day, and Mr. Yakubov was invited by telephone to continue to study the documents, yet he refused. He was removed from the case due to his refusal to follow the judge's instructions. Mr. Formonov was removed for some duration at his trial because he refused to follow the judge's instructions, instead turning his back to the court and remaining silent. He refused to participate in the debates and to make a final statement. Furthermore, neither Mr. Formonov nor his relatives requested to attend the appeals trial, at which his attorney, Mr. Mamadaliev, was present. Mr. Formonov's fair trial complaints stemming from the trial of first instance were examined and discarded by the appeals court. He received a copy of the decision of the appeals court against a written acknowledgment.[9]

6.4 The State-appointed lawyers, Messrs. Kholikberdiev and Mamadaliev, were not under Government influence. As evidence that no physical or psychological pressure was used, the State party points out that counsel Nomozov was present during Mr. Formonov's confessions. There were no restrictions on Mr. Formonov during the investigation stage in bringing a complaint about the alleged torture. He was able on 11 May 2006 to file a petition requesting that he be released on bail and to produce a confession statement requesting a change in the legal basis of his crime to article 168 (swindling).

6.5 His guilt was established by all the collected evidence. His testimony contradicted the co-accused and the victim's testimonies, and the transcript of the recorded conversation between them. If Mr. Formonov had been subjected to torture, then his testimony would not have contradicted the rest of the evidence. Moreover, his last confession was made in the presence of counsel Nomozov.[10]

6.6 The case was heard in an open court session. Mr. Formonov's representatives were permitted to attend the hearings, and the trial was open. This was confirmed by Mr. Yakubov's complaints that in the courtroom there were many bystanders; moreover, Mr. Formonov had not previously criticized the presiding judge in his pamphlets. The State party explains that, pursuant to the domestic law, Mr. Formonov was presented to the court in a cage for his own security and the security of others.

6.7 The torture accusations were made in order to discredit the investigation and law-enforcement agencies, and this smear campaign is evidenced by the fact that Mr. Formonov did not raise any torture allegations prior to his meeting with Mr. Yakubov and his relatives.

[9] The State party has not provided documents in support.

[10] Contested by the author — Formonov made his confession under duress in the presence of counsel Kholiberdiev.

Furthermore, Mr. Formonov's additional sentence was handed down because he had violated internal prison regulations. He was offered a counsel but chose to be unrepresented. Mr. Formonov was never placed in solitary confinement on account of those infractions; in the prison where he was serving his sentence, cells accommodate 10–12 inmates and there are no solitary confinement cells.

6.8 On 31 October 2017, the State party reiterated once again its main arguments denying all allegations of violations of Mr. Formonov's rights under the Covenant.

Author's additional comments

7.1 On 19 June 2017, the author challenged what were described as new inconsistencies in the State party's narrative, the legal assertions that did not comply with due process standards under international law, and the lack of a response to crucial allegations in the communication. According to the author, the State party's narrative of the arrest set forth in its additional submission conflicted with the narrative it had given in the first observations; did not respond directly to the allegations that evidence had been fabricated by the police; and remained unconvincing in its assertion that Mr. Formonov had not been tortured to procure a confession.

7.2 The author submits that the State party continued to refer to dubious or secret evidence, alleging that Mr. Formonov had been recorded as threatening U.M. However, neither any recording nor a transcript of such was ever provided to the defence or made publicly available. The State party did not respond directly to the author's allegation that, in fact, the police had applied the chemical powder to Mr. Formonov's fingers, hair and eyebrows after he had been arrested.

7.3 While the State party admitted that the search had been conducted without a warrant, it suggested that no such warrant had been needed under article 161 of the Criminal Procedure Code because the search had been conducted under exigent circumstances, without explaining what such exigent circumstances were to justify a warrantless search. Furthermore, it did not explain why the police had needed to seize all of the human rights literature at Mr. Formonov's home and why the authorities had failed to produce a list of all items taken from the apartment. The materials confiscated had related to Mr. Formonov's human rights work and not to his alleged crime.

7.4 The State party erroneously asserted that 11.5 hours of access to documents, provided to Mr. Yakubov less than one week before the trial took place, had constituted adequate time and facilities to prepare a defence. Mr. Yakubov had been banned from representing Mr. Formonov at the request of senior investigator K., who had claimed it was likely that Mr. Yakubov would be called to testify about the content of a tape recording between Mr. Formonov and U.M. and thus could not act as witness and representative. That tape recording was never produced and Mr. Yakubov was never called to testify. Mr. Formonov was not given the opportunity to name a replacement attorney of his choice but instead forced to continue with the assistance of two State-appointed attorneys. He was not present to witness or cross-examine any of the testimony or evidence given against him. The State party did not provide a convincing explanation as to why he had been removed from the trial. Mr. Formonov's act of dissent had not been to make loud noise and disrupt the court's proceedings, but rather to remain silent and turn his back to the judge. It would be difficult to conclude that a silent defendant was so disruptive as to require his removal from the courtroom.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that the police interfered arbitrarily with Mr. Formonov's privacy, family, home and correspondence by raiding their home on several occasions without a warrant; by seizing all human rights literature, unrelated to the extortion charges; and by knocking out unconscious the author who had to be hospitalized overnight. However, the material in the file does not allow the Committee to ascertain that those claims have been raised before the domestic courts. Accordingly, the Committee finds the claims under article 17 inadmissible for non-exhaustion of domestic remedies.

8.4 The Committee notes the author's claim that she has exhausted all effective domestic remedies available. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met for the remainder of the claims.

8.5 The Committee notes the author's submission that the State party has violated its obligations under article 2 (2) of the Covenant, read in conjunction with article 7, since it failed to adopt such laws or other measures as may be necessary to give effect to the rights recognized in article 7 of the Covenant. The Committee recalls its jurisprudence[11] that the provisions of article 2 cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. The Committee notes in that regard that the author claims a violation of article 2 (2) in conjunction with article 7 because the State party failed to take effective positive measures to prevent torture, to protect Mr. Formonov from torture and to properly investigate instances of torture and provide an effective remedy (see paragraph 3.2 above). The Committee considers, however, that the author has failed to provide sufficient information to substantiate those claims for purposes of admissibility, in a manner that would render them distinct from the claims that she has advanced under article 7. The Committee therefore declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 The Committee notes the author's claims that her husband was arrested, prosecuted and sentenced on account of his human rights work, that the searches in his home were not properly authorized, that he was tortured and evidence against him manufactured, that his trial was marred by violations of his due process rights. The Committee considers that the author's claims also raise issues under article 14 (3) (d) of the Covenant. In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, her claims under articles 7, read alone and in conjunction with articles 2 (3); 9 (1); 14 (1), (2) and (3) (b), (d), (e) and (g); and 19 (2) of the Covenant, and therefore proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The author has claimed that the State party violated article 7, alone and in conjunction with article 2 (3) of the Covenant, as her husband, a human rights defender, who monitored trials and wrote pamphlets on human rights issues, was subjected to incommunicado detention for over one week after his arrest, during which he was tortured; and that after his conviction he was repeatedly and severely beaten, held in isolation and stripped of his clothing, handcuffed and held in an unheated prison cell for 23 days despite temperatures below freezing. In that connection, the Committee notes the State party's submission that neither Mr. Formonov nor his lawyers had initially complained about his alleged torture and that his accusations about torture in his appeal complaint were examined in the course of the appeal hearing and were not found to be confirmed by the appeals court. The Committee, however, notes that the chosen counsel of the author and her husband, Mr. Yakubov, lodged several complaints to no avail; and that the author has presented the instances of torture in great detail, including information on how her husband was tortured,

[11] See *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

who was present during such torture and certain statements made during such torture. Mr. Formonov's post-conviction torture was also well detailed, including his placement in isolation cells, continual beatings that left him unable to walk for over a week, his placement in unheated cells where the sub-freezing temperatures left him ill, his being strangled by prison authorities and threats of imprisonment of his children. The Committee further notes the author's assertion that the family was only granted a small number of meetings with Mr. Formonov in order to conceal evidence of his torture. The Committee notes that the State party has provided no documentary evidence of any specific inquiry into the numerous allegations of ill-treatment. The Committee further notes the State party has not provided any explanation as to the reasons for which Mr. Formonov was transferred to other prison facilities during visits to Jasluk by the Red Cross. The Committee considers that, under the circumstances, the State party has failed to demonstrate in a satisfactory manner how its authorities adequately addressed the allegations of torture and ill-treatment made by the authors in any meaningful way. It recalls that the burden of proof in regard to torture or ill-treatment cannot rest alone on the author of a communication, especially in view of the fact that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information. The State party has the duty [12] to conduct a prompt, effective and independent investigation[13] of all credible allegations of violations of article 7 of the Covenant. Under those circumstances, the Committee considers that due weight must be given to the author's allegations of torture and ill-treatment. Accordingly, the Committee concludes that the facts as presented by the author reveal a violation of Mr. Formonov's rights under article 7, alone and in conjunction with article 2 (3) of the Covenant.

9.3 Regarding the author's claims that Mr. Formonov was detained arbitrarily as a result of his human rights activities, in violation of his rights under articles 9 (1) and 19 (2), the Committee notes the author's submission that Mr. Formonov had been the chair of a human rights organization's regional branch, that he had monitored trials and had written human rights-related pamphlets. It further notes the State party's contention that he was arrested on charges of extortion. In that regard, the Committee recalls its jurisprudence that the protection against arbitrary detention is to be applied broadly and that the "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.[14] The Committee also recalls that an arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression.[15] The Committee notes the author's claims that the arrest was aimed at intimidating and silencing Mr. Formonov, targeting his activities as a human rights defender. It also notes the author's information that his photocopier and all human rights-related literature and pamphlets were seized during the search, and the State party's failure to explain how the confiscated human rights material could be related to the extortion charges. The Committee considers therefore that the author has established that Mr. Formonov was arrested and detained for his human rights work. In the circumstances described by the author, and in the absence of the State party's explanations regarding these elements of the communication, the Committee considers that there has been a violation of Mr. Formonov's rights under articles 9 (1) and 19 of the Covenant.

9.4 Regarding article 14 of the Covenant, the Committee notes the author's claim that Mr. Formonov was kept in a metal cage during the court hearing. The Committee further notes that the State party has accepted this as a fact. The Committee recalls that defendants should not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.[16] On the basis of the information before it, the Committee concludes that keeping Mr. Formonov in a cage constitutes a

[12] See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

[13] See general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14.

[14] See general comment No. 35 (2014) on liberty and security of person, para. 12.

[15] Ibid. para. 17, quoting *Zelaya Blanco v. Nicaragua* (CCPR/C/51/D/328/1988), para. 10.3.

[16] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

violation of his right to be presumed innocent until proved guilty under article 14 (2) of the Covenant.

9.5 The Committee notes the author's claims that throughout most of the trial her husband had no access to counsel of his own choosing, his chosen counsel was not given adequate time to prepare the case and neither defence counsel had access to certain documents, including the appeal court decision. It further notes the fact, which is undisputed by the State party, that Mr. Formonov's chosen counsel, before having been removed from the trial, was given 11.5 hours to have access to the documents, which were provided less than a week before the trial took place. Accordingly, the Committee finds that the State party has violated Mr. Formonov's rights under article 14 (3) (b) and (d) of the Covenant.

9.6 The Committee further notes the claim that Mr. Formonov's confession under duress to the charge of extortion obtained in the presence of the State-appointed counsel was accepted as evidence by the trial court. It also notes the State party's statement that the evidence considered by the court was obtained in a lawful way and accepted by the court as admissible and that the torture allegations raised in Mr. Formonov's appeal were reviewed and rejected by the appeals court. In that regard, the Committee notes the author's contention that the appeals court decision was kept secret. It further notes that the State party has not furnished any documentary evidence to support its statement and that there is nothing on file to suggest that either the trial or the appeals court considered Mr. Formonov's claim that he was kept incommunicado when he made his confession under duress and that he retracted the confession once he talked to his chosen counsel. In that connection, the Committee concludes that the author's rights under article 14 (3) (g) of the Covenant had been violated.

9.7 Having found a violation of article 14 (2) and 14 (3) (b), (d) and (g) of the Covenant, the Committee will not examine separately the author's remaining claims under article 14 (1) and (3) (e) of the Covenant.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of Mr. Formonov's rights under articles 7, read alone and in conjunction with articles 2 (3), 9 (1), 14 (2) and (3) (b), (d) and (g), and 19 (2) of the Covenant.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy in the form of full reparation. Accordingly, the State party is obligated to, inter alia: (a) conduct a thorough and effective investigation into the allegations of torture of the author's husband and, if confirmed, prosecute, try and punish those responsible; (b) quash the trial court verdicts; and (c) provide adequate compensation to the author's husband for the violations suffered. The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in the official languages of the State party.